

**Town of Amherst**  
**Zoning Board of Appeals – Special Permit**

*DECISION*

**Applicant:** Joel Greenbaum

**Date Application filed with the Town Clerk:** June 30, 2005

**Nature of request:** A Special Permit under Sections 3.325 and 9.22 of the Zoning Bylaw to remove a 25' x 25' barn and replace it with a 30' x 40' mixed-use addition consisting of a real estate office on the first floor and a four (4) bedroom apartment on the second and third floors

**Location of property:** 15 Hallock Street (Map 11C, Parcel 197, B-L Zoning District)

**Legal notice:** Published on July 27<sup>th</sup> and August 3<sup>rd</sup>, 2005 in the Daily Hampshire Gazette and sent to abutters on July 28, 2005.

**Board members:** Tom Simpson, Ted Rising and Barbara Ford

**Submissions:** The applicant submitted:

- A site plan, by Joan Rockwell & Assoc, dated 6/16/05
- Building plans for the addition by Austin Designs, dated 6/20/05
- Calculations of existing and proposed lot coverage
- A Management plan for the property

Town staff submitted:

- A memo from the Planning Department listing some of the previous special permits related to the property (FY81-17(denied), FY90-69, FY93-27 & FY96-0026), dimensional regulations and parking regulations, dated 8/5/05
- A memo from the Fire Department outlining several driveway and access issues, dated 8/9/05.

**Site Visit:** August 9, 2005

The Board met with Joel Greenbaum at the site and observed the following:

- The exterior of the existing 4-unit house, newly painted with new windows
- The attached barn in the back of the house that will be removed.
- The connecting link between the house and barn that will be renovated for the proposed structure
- The property lines, with large evergreens at the rear of the property
- The location of proposed additional parking and plantings

- The surrounding area of multi-family structures, either apartments or converted single-family homes
- The non-conforming nature of the properties along Hallock Street in terms of frontage, setbacks and lot size requirements

**Public Hearing:** August 11, 2005

Joel Greenbaum represented himself at the hearing. He said that he purchased the house last fall and has made several improvements. It is an old Greek-revival type house built in 1860-70 by E. D. Bangs. He now wants to remove the barn and replace it with a mixed-use office building and an additional apartment.

Section 3.325 of the Zoning Bylaw allows for mixed-use in a B-L district via Site Plan Review. However, this property is non-conforming as to lot area, frontage and side setback requirements, and has had several Special Permits in the past. Hence the Site Plan Review process is being subsumed under the Special Permit process, the higher order of review.

The property under consideration is 16,117 square feet. Minimum lot size required for 4 existing units plus 1 proposed unit is 36,000 square feet in a B-L zoning district. The existing frontage for the property is 82.6 feet (125 feet required), the front setback is 15 (20 feet required) and the existing side setback to the west is 8 feet (25 feet required). The property is deep, and even with the proposed addition, the setback would be 73 feet in the back.

The applicant presented the following information to the Board:

- The first floor of the proposed addition would contain office space for the applicant's real estate business, plus a laundry for the existing apartments and the new unit.
- The second and third floors of the addition would contain a 4-bedroom apartment. Most of the proposed apartment would be on the second floor, with the fourth bedroom and storage on the third floor.
- The proposed addition is approximately 23 feet longer and 8 feet wider than the existing barn.
- Building coverage would increase with the addition from 14% to 18%. Maximum building coverage allowed according to Table 3 of the Zoning Bylaw is 35%.
- The resulting building would have three sections and three roof lines that step down from front to back, matching the downward slope of the property.
- The existing building contains 4 dwelling units – 2 two-bedroom units and 2 one-bedroom units.
- A new "egress connector" between the original house and the proposed addition would include a second means of egress for the front house, plus stairs for the proposed apartment of the new section.
- The stairwell for the proposed addition would connect the first floor to the apartment's second and third floors.
- A second means of egress for the apartment would be in the back of the addition.

Mr. Greenbaum stated that the architect for the addition shifted the driveway to the far easterly side of the property in order to improve drainage and create more parking. There is a row of trees on the eastern side of the property, and some will have to be removed, he said. However, the Fire Department memo had concerns about access, given the proposed design of the driveway and parking. The applicant said that he would talk to the Assistant Fire Chief, and re-design the driveway and parking if necessary.

The applicant said that he would like to keep the 14 parking places proposed on the site plan. Ten spaces would be needed for the five dwelling units, and the office would need two spaces, giving a total of twelve (12) required spaces. A handicapped accessible space also will be provided. Mr. Greenbaum said that 1 parking space per bedroom in the new apartment is what he would like.

The Board inquired about the landscape plans. The plans show 4 "Little Kim" lilacs proposed along the westerly border next to the addition and 3 Bradford pears proposed on the eastern border. The Board was concerned that the property to the west will need more screening, particularly in the winter. The applicant agreed to add evergreen screening on the west side of the property.

The petitioner stated that switch lights are proposed for the addition. Two down-shielded post lights also are proposed, one for the egress connector and the other along the driveway. A sensor light for the parking lot is proposed, to be located at the back (northern end) of the addition.

In terms of refuse and recycling, Mr. Greenbaum stated that the dumpster is located in the far back of the property, and pick-up of residents' waste has not been a problem. The refuse truck can easily get to the back of the property. A stockade fence will shield the dumpster from sight.

It was noted that Hallock Street, as one of the older neighborhoods in Amherst, has many non-conforming lots in terms of frontage, set backs, lot size and other dimensional requirements of the current Zoning Bylaw.

No one from the public spoke to this proposal.

Ted Rising moved to close the evidentiary part of the hearing. Barbara Ford seconded the motion, and the vote was unanimous.

The deliberative part of the public meeting was scheduled for September 7, 2005

**Public Meeting:** September 7, 2005

Ted Rising stated that the applicant had done a nice job on improvements to the house. He likes the idea of tearing down the dilapidated barn and replacing it with something useful to the community. He also pointed out that high-density development in the center

of town makes sense.

Mr. Rising asked the applicant if he had consulted with the Fire Department and whether the driveway needed to be re-designed. Mr. Greenbaum replied that the Fire Chief said an 18-foot driveway is required for emergency vehicles, which his plan shows, but that two (2) feet of solid ground on either side is necessary to protect the roadway and berms. Thus the driveway needs to be shifted to the west a bit at the entrance, resulting in less of a curve to the parking area. The shift for driveway entrance will protect the storm drain on Hallock Street at the westerly corner of the property as well.

Board Chair Tom Simpson said that he sees two problems with this petition:

- 1) The lot is 16,117 square feet and already has 4 dwelling units. The Zoning Bylaw requires 20,000 square feet for a one-family dwelling in a B-L zoning district. Each additional unit is required to have 4,000 square feet. To accept a fifth dwelling unit would require 36,000 square feet, which would seriously exacerbate the non-conformity.
- 2) The setback on the proposed addition is shown as 8 feet, not the 25-feet feet that the Bylaw requires. It was his understanding that case law has indicated that extensions beyond the setback lines constitute a Variance and should be sought under a Variance, not by way of a Special Permit.

Mr. Simpson stated that, in his viewpoint, a new apartment should not be added at all, particularly a four-bedroom unit. There already are four dwelling units on the property with 6 bedrooms total. A fifth unit would result in 10 bedrooms on this small lot.

Although the Board usually does not confer with the applicant during deliberations, Mr. Greenbaum was recognized and pointed out that most of the lots along Hallock Street are non-conforming. He quoted Section 9.22 of the Bylaw that allows the Board of Appeals to authorize a non-conforming building to be enlarged or reconstructed provided that is not be "substantially more detrimental to the neighborhood" than the existing non-conformity. He feels that the proposed addition will not be more detrimental – he will be cleaning up the property and adding to the community. Mr. Greenbaum further gave an example of another house that he purchased and improved.

Bonnie Weeks, Building Commissioner, said that in a B-L District, the side setback can be modified to match the context of the existing pattern of the building.

Barbara Ford stated that she was initially concerned with the side setback being so close to the property line, but not now. The proposal continues the line of the existing house.

Ms. Ford said that she is more concerned with the proposed fourth bedroom, particularly since it is on the third floor and separate from the rest of the house. To access the third floor from the second floor apartment, one can only use the "connector" stairway outside the apartment. There are no internal stairs.

Mr. Rising agreed - he has concerns about the fourth bedroom as well.

Mr. Greenbaum said that the fourth bedroom is located upstairs because the intent of the building design was to match the rest of the house. The pitched roof thus created a big attic and he felt this would be a great private space with a great view of the Town. There will be a two-hour fire separation for the stairwell as required by the building code. Also, an external stairway does adhere to the building code.

Mr. Simpson stated that he's still concerned with adding another housing unit. The result would be too intense for the property. The lot is half as big as the Zoning Bylaw requires, and the proposed fifth unit would add 4 bedrooms.

Mr. Simpson said that the Board and the applicant have to live with the Bylaw as it is, and there must be compelling reasons for action against the general Bylaw restrictions. The Board cannot take personalities of the applicants into account, even though this applicant manages his properties well. Future property owners or tenants may not.

Mr. Simpson said that the Board could deny the application or modify it to include only a business space. He would not vote for any more residential use on the site.

Mr. Simpson suggested that the Board modify the application and remove the extra dwelling unit. Both Mr. Rising and Ms. Ford stated that they could "go either way" – approve a smaller fifth dwelling unit plus the office or approve just the office addition.

The Board asked the petitioner that if the office space is approved, could the plans be revised. Mr. Greenbaum stated that he originally wanted to have two floors of business space, but then would be required to build an elevator. Now the result would be a single story business, and he would have to redesign it.

### **Findings:**

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 – The proposal for a mixed-use of housing and office space is suitably located in the B-L District, adjacent to a General Residence (R-G) District with multi-family homes; however, the residential density on the lot is such that the lot is half the size that the Bylaw requires for five dwelling units plus office space.

10.381 – The proposal is not compatible with Uses permitted by right, because the proposed residential density so significantly exceeds what the Bylaw would allow. A minimum of 36,000 square feet would be required for 5 dwelling units, and the property under consideration has only 16,117 square feet in area. The original four-dwelling units are "grandfathered", but would not be allowed as new construction under the dimensional requirements of the Zoning Bylaw, with 20,000 square feet required for one dwelling unit in a B-L zoning District, and 32,000 square feet required for four dwelling units. No multi-

family buildings are allowed “by right”, but require detailed review via the Special Permit process.

10.382 – The proposal would not constitute a nuisance due to lights or visually offensive structures or site features, since the lighting will be downcast, and the proposed addition would be attractive, complementing the two sections of the existing house.

10.383 & 10.384 – The proposal would not be an inconvenience or hazard to abutters, vehicles or pedestrians because sidewalks, adequate parking and lighting are proposed. The new office space would be low-impact on the area and appropriate in a B-L District.

10.385, 10.392 & 10.393 – The proposal showed minimal screening of adjacent residential uses, since the proposed extension would be only 8 feet from the property line on the west. If the building were sited further back from the line, a denser screen could occur while also allowing for some natural lighting. Moreover, existing pines along the easterly boundary would have had to be removed to accommodate the extra parking required for a fifth unit with this proposal. Protection of the adjoining premises against light intrusion would be made more difficult by the addition.

10.387 & 10.388 – The proposal provides convenient and safe vehicular and pedestrian movement within the site, and in relation to the adjacent area, since the driveway is wide enough for two-way traffic and emergency vehicles and will be lighted with motion-sensitive lighting. In addition, enough area is provided in the driveway for loading and unloading of goods, or for maintenance equipment.

10.389 – The proposal provides adequate methods of disposal, since the property is connected to town water/sewer and a shielded trash/recycling area will be provided at the back of the property.

10.395 – The proposal does not create disharmony with respect to the terrain and the use, scale and architecture of existing buildings in the vicinity, because the proposed design for the addition is respectful of the downward slope of the site and the original Greek Revival style of the existing house.

10.397 – The proposal does not provide any recreational facilities, or much lawn/open space for passive recreation because so much of the site is taken up with the existing building, the proposed addition, the new driveway, screening and additional parking. With five dwelling units and a potential for 12+ people residing on the property, the proposed density is too great for the available open space on the property.

10.398 - The proposal is not in harmony with the general purpose and intent of this Bylaw. One goal of the Bylaw is to allow for increased residential density in the center of Amherst, to promote the convenience and general welfare by permitting residents to walk or take public transportation to services.

However, this proposal deviates too greatly from the dimensional requirements for such residential development in the Limited Business (B-L) District.

**Zoning Board Decision:**

Mr. Simpson MOVED to approve the Special Permit for business use only, with the dimensions of the added building to be 30 x 40 feet or smaller. Mr. Rising SECONDED the motion.

For all of the reasons stated above, the Board VOTED unanimously to GRANT a Special Permit to Joel Greenbaum to remove a 25' x 25' barn and replace it with a 30' x 40' or smaller addition for use as office space under Sections 3.325 and 9.22 of the Zoning Bylaw on the premises at 15 Hallock Street (Map 11C, Parcel 197, B-L Zoning District), with conditions.

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TOM SIMPSON	TED RISING	BARBARA FORD

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2005 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2005.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2005  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2005,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit to Joel Greenbaum to remove a 25' x 25' barn and replace it with a 30' x 40' or smaller addition for use as office space under Sections 3.325 and 9.22 of the Zoning Bylaw on the premises at 15 Hallock Street (Map 11C, Parcel 197, B-L Zoning District), subject to the following conditions:

1. All new exterior lighting shall be down-cast.
2. Parking shall be limited to 12 parking places, including one accessible space.
3. Final site plans, including plans for screening the parking area, evergreen screening on the west property line, floor plans and parking shall be reviewed for approval at a public meeting by the Board on October 20, 2005.
4. If feasible, the existing evergreen on the easterly border of the property shall be preserved.
5. A revised management plan reflecting the use of the addition as an office building only shall be submitted to the Board for review and approval at a public meeting on October 20, 2005.
6. The stockade fence to screen the refuse/recycling containers shall be no more than six (6) feet high and no closer than three (3) feet from the north property line.

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TOM SIMPSON, Chair  
Amherst Zoning Board of Appeals

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DATE